

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

F.M.S.,

Petitioner,

v.

Craig LOWE, Warden of Pike County Correctional Facility; Brian MCSHANE, Acting Field Office Director of the Immigration and Customs Enforcement, Enforcement and Removal Operations Philadelphia Field Office; Teresa RILEY, Acting Chief Immigration Judge, Executive Office for Immigration Review; Daren MARGOLIN, Director, Executive Office for Immigration Review; Kristi NOEM, Secretary of the Department of Homeland Security; Pamela BONDI, Attorney General of the United States; and Todd LYONS, Acting Director, U.S. Immigration and Customs Enforcement,

Respondents.

Case No. _____

**VERIFIED PETITION FOR
WRIT OF HABEAS
CORPUS**

INTRODUCTION

1. Simply for voicing political opposition to the regime of Nicolás Maduro, the Venezuelan national military unlawfully imprisoned Petitioner F.M.S.¹ without any legal process. (“Petitioner” or “Mr. M.S.”). Over the course of four days,

¹ Following this petition is a motion to proceed by initials for Petitioner F.M.S and his family members, and to seal Petitioner F.M.S.’s Alien Registration Number (“A Number”).

military officers subjected him to repeated physical, psychological, and sexual torture. Upon release, Mr. M.S. sought refuge in the United States and was released from immigration custody on humanitarian parole following a determination that he possesses a credible fear of persecution upon return to Venezuela.

2. For about 17 months, Mr. M.S. dutifully complied with all immigration reporting requirements and accrued no criminal convictions. Yet in March 2025, ICE abruptly revoked Mr. M.S.'s grant of parole without notice or explanation and imprisoned him without the possibility of a bond hearing, in violation of regulatory requirements and Mr. M.S.'s due process rights.

3. As of this filing, ICE has detained Mr. M.S. for over seven months. For Mr. M.S., that imprisonment has been devastating. In ICE custody, Mr. M.S. has suffered two incidents of sexual assault. Those crimes, and the possibility of deportation to the site of his prior torture, have compounded his already significant post-traumatic stress disorder.

4. For the reasons set forth below, this Court should order Mr. M.S.'s immediate release pending a hearing at which ICE must justify any request for his re-detention. In the alternative, this Court should find that his continued detention without a bond hearing has become unreasonably prolonged in violation of his due process rights such that release or a constitutionally adequate bond hearing is required.

PARTIES

5. Petitioner F.M.S. has been jailed in ICE custody at the Pike County Correctional Facility (“Pike”) for over seven months, since March 14, 2025. *See* Decl. of Kate Scanlan (“Scanlan Decl.”) ¶ 4.

6. Respondent CRAIG LOWE is named in his official capacity as Warden of Pike County Correctional Facility in Lords Valley, Pennsylvania. Respondent Lowe is an immediate custodian of Petitioner.

7. Respondent BRIAN MCSHANE is named in his official capacity as Acting Field Office Director of the ICE Enforcement and Removal Operations (“ERO”) Philadelphia Field Office. He is charged with overseeing all ICE detention centers in Pennsylvania, Delaware, and West Virginia and has the authority to make and execute custody determinations regarding individuals detained there. Respondent McShane is an immediate custodian of Petitioner.

8. Respondent TERESA RILEY is named in her official capacity as Acting Chief Immigration Judge for the Executive Office of Immigration Review (“EOIR”), the sub-agency within the Department of Justice (“DOJ”) that administers the nation’s immigration courts and the Board of Immigration Appeals (“Board” or “BIA”). She is responsible for oversight of the Elizabeth Street Immigration Court and presides over removal and bond proceedings.

9. Respondent DAREN MARGOLIN is named in his official capacity as the Director of EOIR. He is responsible for the policies and operations of the immigration courts.

10. Respondent KRISTI NOEM is named in her official capacity as the Secretary of the U.S. Department of Homeland Security (“DHS”), which oversees ICE. She is responsible for the administration and enforcement of immigration laws pursuant to 8 U.S.C. § 1103(a) and has supervisory responsibilities for and authority over the detention and removal of non-citizens throughout the United States. Respondent Noem is the ultimate legal custodian of Petitioner.

11. Respondent PAMELA BONDI is named in her official capacity as the Attorney General of the United States. In this capacity, she is responsible for administration of immigration laws as exercised by EOIR pursuant to 8 U.S.C. § 1103(g). Respondent Noem oversees the immigration court system, including all immigration judges (“IJ”) and the BIA, and is legally responsible for administering Petitioner’s removal and custody redetermination proceedings and the standards used in those proceedings.

12. Respondent TODD M. LYONS is named in his official capacity as Acting Director of ICE. He directs ICE operations and is responsible for the administration of immigration laws.

JURISDICTION AND VENUE

13. The Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 2241 (habeas corpus); Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause); 5 U.S.C. § 706 (Administrative Procedure Act (“APA”)); 28 U.S.C. § 2201 (Declaratory Judgment); and 28 U.S.C. § 1651 (All Writs Act).

14. Federal district courts have jurisdiction to hear habeas claims by noncitizens challenging the lawfulness of their detention. *See German Santos v. Warden Pike Cnty. Corr. Facility*, 965 F.3d 203, 208 (3d Cir. 2020); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001). Furthermore, the Supreme Court has found that it has jurisdiction to review statutory and constitutional claims by noncitizens challenging their detention without bail pursuant to, inter alia, § 1225(b), concluding that neither 8 U.S.C. § 1252(b)(9) nor § 1226(e) deprives the federal courts of jurisdiction to review those claims. *See Jennings v. Rodriguez*, 583 U.S. 281, 292–96 (2018).

15. Federal courts also have jurisdiction through the APA to “hold unlawful and set aside agency action” that is “arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.” 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by “any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory

injunction or habeas corpus”). The APA affords a right of review to a person who is “adversely affected or aggrieved by agency action.” 5 U.S.C. § 702.

16. Venue is proper in this District under 28 U.S.C. § 2241 and 28 U.S.C. § 1391. Petitioner is presently in the custody of Respondents in this District, at Pike County Correctional Facility, which is in Pike County within the jurisdiction of the Middle District of Pennsylvania. *See* 28 U.S.C. §§ 1391, 2241(c), 2242, 2243.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

17. There is no statutory requirement to exhaust administrative remedies where a noncitizen challenges the lawfulness of detention. *Pujalt-Leon v. Holder*, 934 F. Supp. 2d 759, 773 (M.D. Pa. 2013). Where, as here, the agency has predetermined a dispositive issue, no further action is necessary. *Woodall v. Fed. Bureau of Prisons*, 432 F.3d 235, 239 n.2 (3d Cir. 2005).

18. Specifically, agency regulations and precedent decisions by the BIA require an IJ to find that individuals who are detained pursuant to 8 U.S.C. § 1225(b) are subject to detention without bond. *See* 8 C.F.R. § 1003.19(h)(2)(i)(B); *Matter of Oseiwusu*, 22 I&N Dec. 19 (BIA 1998). Nor may the Board entertain the constitutional challenges presented here. *See Matter of C-*, 20 I&N Dec. 529, 532 (BIA 1992).

19. In any event, Mr. M.S. has sought release from Respondents using the only statutory mechanism available to him: humanitarian parole under 8 U.S.C. § 1182(d)(5). ICE denied that request on October 10, 2025, without providing

specific reasoning. Scanlan Decl. ¶ 36; Ex. F, ICE Parole Denial. There is no appeal of ICE's decision. *Id.*

STATEMENT OF FACTS AND PROCEDURAL HISTORY

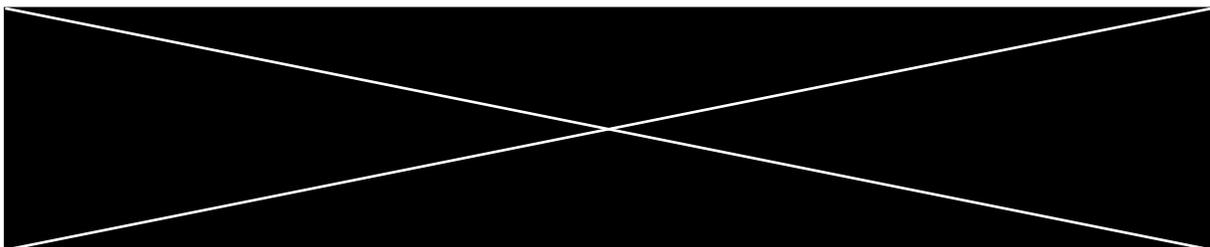
Background

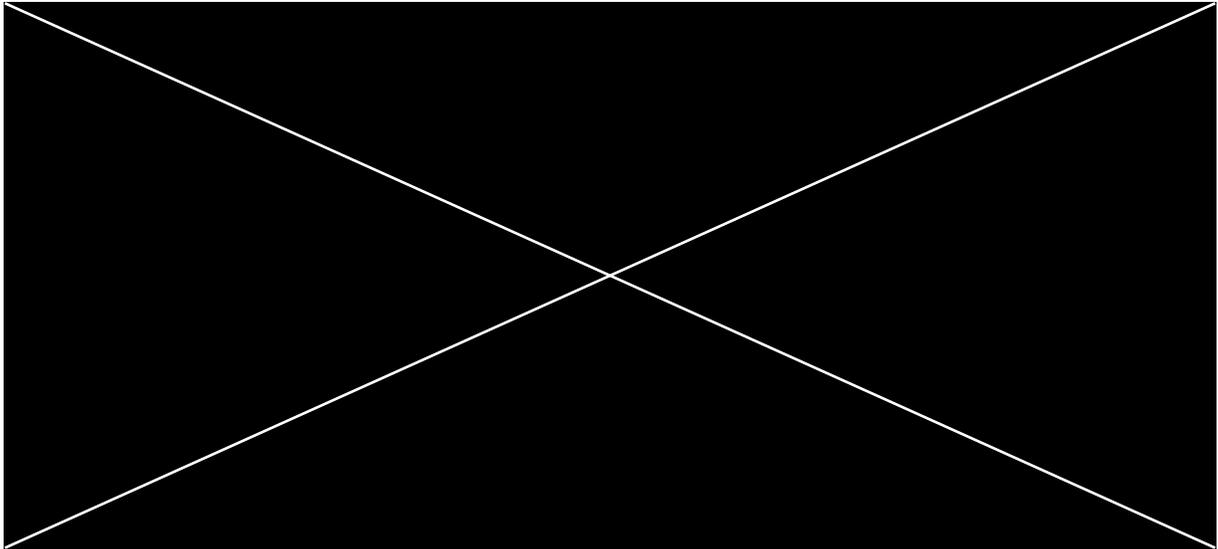
20. Mr. M.S. is a 26-year-old native and citizen of Venezuela. Ex. A, Decl. of F.M.S. ("Pet'r Decl.") ¶ 1. He was raised in Caracas, Venezuela, alongside his three siblings. *Id.* ¶ 3.

21. Following his completion of high school, Mr. M.S. enrolled in a military academy in Catia La Mar, Venezuela. *Id.* ¶ 6.

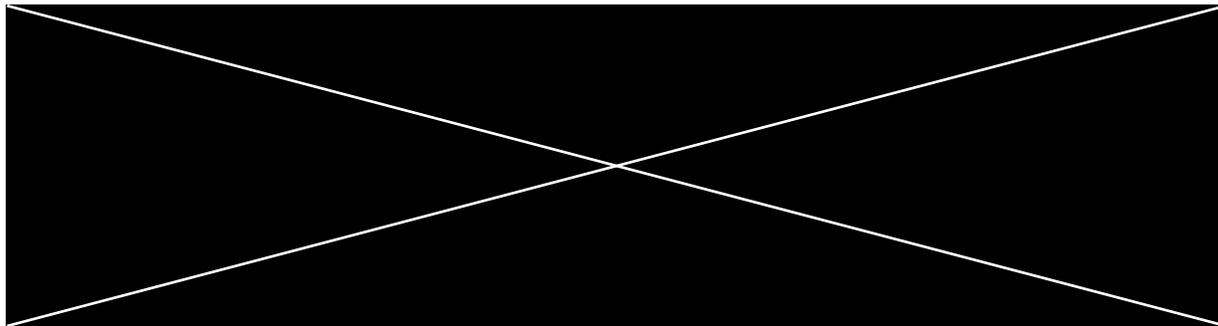
22. About a month after classes started, a navy captain and a navy lieutenant gathered the students and informed them that they were required to recruit 30 family members to participate in an electoral campaign for Venezuelan President Nicolás Maduro. *Id.* ¶ 8. The navy leadership provided the students a form that they were mandated to complete with their family members' information, including their addresses and birth dates. *Id.*

23. Mr. M.S. is politically opposed to the regime of Nicolás Maduro. He describes Maduro's administration as corrupt and supports his opposition candidate, Maria Corina Machado. *Id.* ¶¶ 9–10.

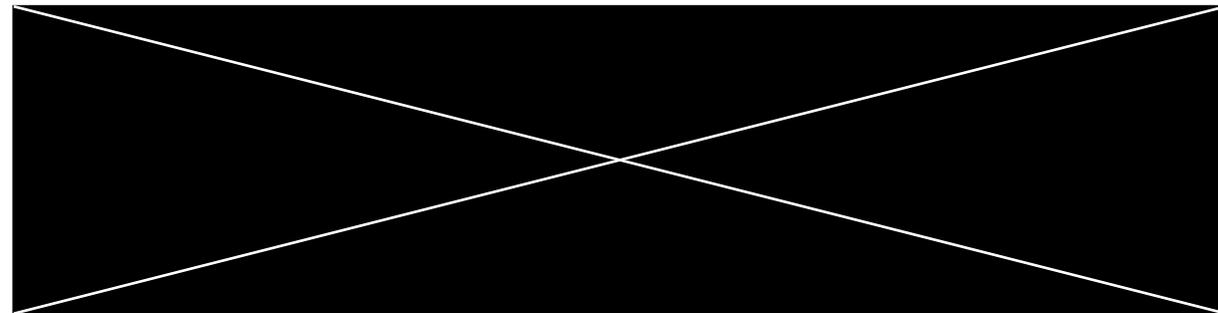


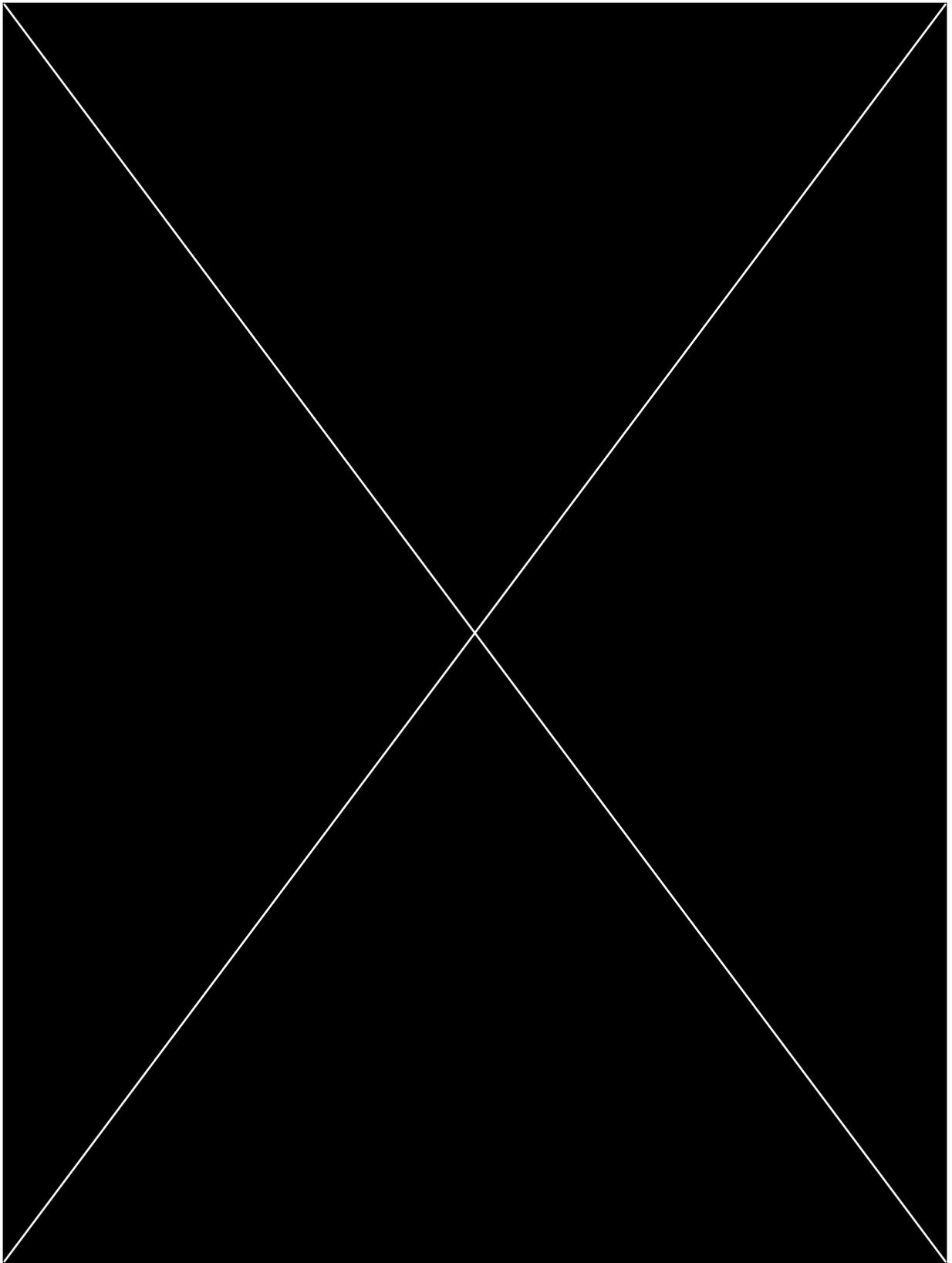


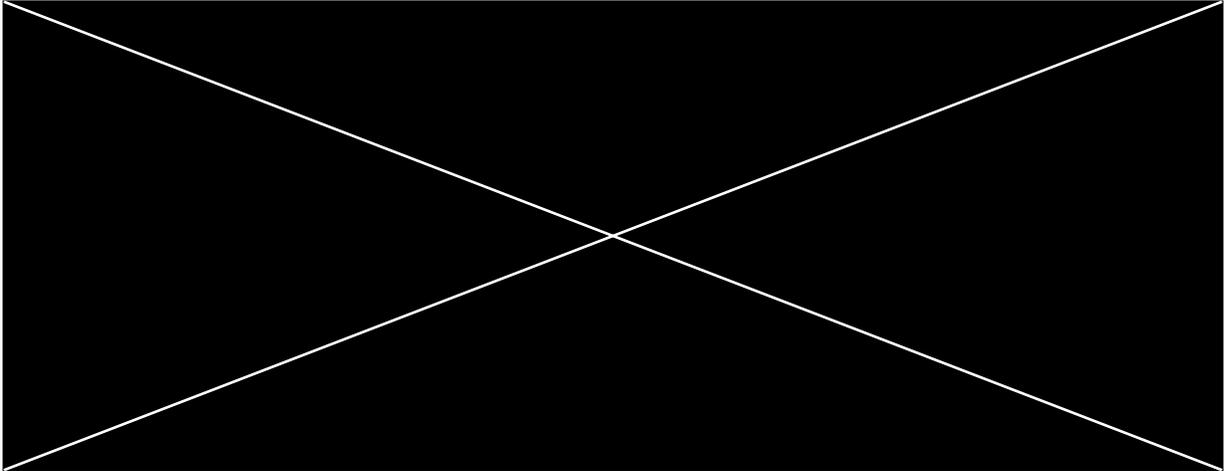
26. Over the next four days, officers held Mr. M.S. in a cell and subjected him to severe physical and psychological torture. 



 *see also* Ex. B, Psychological Evaluation of Diana Puñales Morejon (“Puñales Report”) at 5.







34.  Mr. M.S. surmised that military officers had arrived to arrest him. To escape, Mr. M.S. fled by bus to the city center. From there, he decided to flee to Colombia. Though he could not afford a bus ticket out of the country, he was able to find a truck driver who agreed to deliver him to Cucuta, Colombia. *Id.* ¶ 24.

35. Mr. M.S.'s partner and her child met him in Colombia, from where the three fled to the United States to seek safety. *Id.* ¶ 25.

Mr. M.S.'s Flight to the United States and Initial Removal Proceedings

36. Via the CBP One application,² Mr. M.S. presented himself for inspection at the El Paso, Texas port of entry on or around July 1, 2023. *Id.* ¶ 26; Ex. C, Notice to Appear. ICE detained Mr. M.S. at that appointment and subsequently

² CBP One is a mobile application maintained by DHS through which noncitizens who seek to travel to the U.S. via the southwest border can schedule an appointment to present themselves for inspection at a port of entry. *See* U.S. CUSTOMS AND BORDER PATROL, FACT SHEET: USING CBP ONE TO SCHEDULE AN APPOINTMENT (accessed Oct. 22, 2025), https://www.cbp.gov/sites/default/files/assets/documents/2023-Jan/CBP%20One%20Fact%20Sheet_English_3.pdf.

placed him into custody at the Otero County Processing Center in Chaparral, New Mexico. Scanlan Decl. ¶ 11.

37. ICE processed Mr. M.S. for expedited removal under 8 U.S.C. § 1225(b)(1) and issued an order of expedited removal. *Id.* ¶ 11. Because Mr. M.S. claimed a fear of returning to Venezuela, DHS provided him a credible fear interview pursuant to 8 U.S.C. § 1225(b)(1)(A)(ii) on September 13, 2023. *Id.* Following that interview, DHS determined that Mr. M.S. had a credible fear of persecution. Accordingly, his expedited removal order was vacated and DHS initiated full removal proceedings under 8 U.S.C. § 1229a, via issuance of a Notice to Appear. *Id.* ¶ 12. DHS charged Mr. M.S. as removable pursuant to 8 U.S.C. § 1182(a)(7)(A)(i)(I). *See* Notice to Appear. DHS further designated Mr. M.S. as an “arriving alien” pursuant to 8 U.S.C. § 1225(b). *Id.*

38. On or around October 9, 2023, ICE released Mr. M.S. from custody via a grant of humanitarian parole pursuant to 8 U.S.C. § 1182(d)(5). Scanlan Decl. ¶ 13; Ex. D, Form I-830.³ Prior to release, ICE fitted Mr. M.S. with an ankle monitor that he would wear until ICE removed it around February 2025. Pet’r Decl. ¶¶ 26, 34.

39. Upon moving to New York, Mr. M.S. regularly appeared for check-ins with ICE officers. ICE also required him to take a photograph of himself every

³ *See also infra*, ¶ 56 (describing that 8 U.S.C. § 1182(d)(5) humanitarian parole is the only mechanism by which ICE can release individuals charged as “arriving aliens”).

Monday and share that photograph with an ICE official to confirm his whereabouts. *Id.* ¶ 34.

40. On November 8, 2023, Mr. M.S. appeared for a check-in with ICE. He was not scheduled to appear for immigration court on that day. Nonetheless, a change of address form was filed with the immigration court on that day listing an address in the Bronx as Mr. M.S.'s current residence. Scanlan Decl. ¶ 16. That change of address form contains a typewritten signature. *Id.* Mr. M.S. did not complete that form himself and is unfamiliar with the address listed. Pet'r Decl. ¶ 29.

41. Following the filing of the change of address form, EOIR changed the venue of his proceedings from the Denver Immigration Court to the New York Immigration Court, however the notice of that change of venue sent to the address listed on the change of address form was returned to the immigration court as undeliverable. Scanlan Decl. ¶ 18.

42. On July 2, 2024, the New York Immigration Court sent notice to Mr. M.S.'s listed address of a hearing set to take place on October 24, 2024. Mr. M.S. did not receive notice of that hearing and did not appear. He was ordered removed in absentia on the hearing date. *Id.* ¶ 19.

43. Mr. M.S. continued to comply with ICE check-in requirements, including sending weekly photographs of his whereabouts, following entry of his in absentia order. ICE did not make him aware of that order. To the contrary, ICE removed Mr. M.S.'s ankle monitor in February 2025. Pet'r Decl. ¶ 34.

Mr. M.S.'s Redetention

44. ICE suddenly re-detained Mr. M.S. on March 14, 2025, in Bronx, New York. Scanlan Decl. ¶ 22. Upon information and belief, prior to detaining Mr. M.S., ICE did not provide Mr. M.S. notice that it intended to revoke his grant of humanitarian parole nor did it provide an explanation for its revocation and his redetention. Pet'r Decl. ¶ 36. To date, Mr. M.S. has not received any such explanation or notice. *Id.*

45. Mr. M.S. is currently detained at Pike County Correctional Facility (“Pike”) in Lords Valley, Pennsylvania. Scanlan Decl. ¶ 23.

46. On March 21, 2025, upon learning of his in absentia order and receiving pro bono counsel, Mr. M.S. filed a motion to reopen his removal proceedings. On May 23, 2025, an IJ granted that motion, finding that Mr. M.S. had not received proper notice of his October 2024 hearing. Ex. E, Mot. to Reopen IJ Order.

47. After Mr. M.S.'s proceedings were reopened, counsel from The Legal Aid Society moved to substitute as counsel in his proceedings. Scanlan Decl. ¶ 29. At the first hearing scheduled following the reopening of proceedings, the immigration court set Mr. M.S.'s case for an individual trial date on his application for asylum, withholding of removal, and protection under the United Nations Convention Against Torture. *Id.* ¶ 30.

48. The immigration court initially set Mr. M.S. for a trial date of October 6, 2025, however on August 22, 2025, *sua sponte* rescheduled the trial date to

October 14, 2025. *Id.* ¶ 32. On September 26, 2025, the court against *sua sponte* rescheduled Mr. M.S.’s trial date to November 5, 2025. *Id.*

Mr. M.S.’s Abuse in Detention and Attempts to Secure Release

49. While detained at Pike, Mr. M.S.’s physical and mental health has deteriorated. Pet'r Decl. ¶¶ 40–43. He describes inadequate food, leaving him constantly hungry since the date of his detention, as well as inadequate medical care. *Id.* at 41–42

50. In May 2025, Mr. M.S. suffered two incidents of sexual assault, during which another inmate groped his genitals. *Id.* ¶ 43. Mr. M.S. reported this incident to Pike officials. *Id.*

51. In August 2025, Mr. M.S.’s legal team referred him for a comprehensive psychological evaluation. *See* Puñales Report. Following her evaluation, Dr. Diana Puñales Morejon, PhD, MS, concluded that Mr. M.S. suffers from recurrent major depressive disorder, generalized anxiety disorder, and post-traumatic stress disorder (“PTSD”) as a result of the trauma he suffered abroad and in detention. *Id.* at 11. Dr. Puñales reports that Mr. M.S. “feels unable to control his worries,” “has significant difficulties concentrating and his mind goes blank frequently,” and “experiences increased muscle tension as well as sleep disturbance from his anxiety.” *Id.* at 2. “He has significant difficulty falling sleep such that he stays awake for several hours before sleep befalls him.” Mr. M.S. “regularly experiences recurrent, involuntary, and intrusive memories of the traumas from

being tortured and sexually assaulted by the Venezuelan National Guard in his military academy in Venezuela. In addition to those traumatic memories, he has ongoing flashbacks of the torture and sexual assault and an intrusive quality to the memories. He reports traumatic nightmares about those experiences and has dissociative reactions depersonalization and derealization.” *Id.* at 3.

52. Notably, Dr. Puñales reports that Mr. M.S.’s “psychological symptomatology has not only persisted but it has in fact been exacerbated culminating with his detention at the Pike County Correctional Facility.” *Id.* at 9.

53. Because Mr. M.S. is detained pursuant to 8 U.S.C. § 1225(b)(1)(B)(ii), he is ineligible for custody review before the immigration court. *See Matter of M-S-*, 27 I&N Dec. 509 (A.G. 2019); *see also infra* ¶ 56 (describing custody framework). Accordingly, the only mechanism by which ICE can release him from custody is the humanitarian parole provision contained at 8 U.S.C. § 1182(d)(5)(A). *Id.*

54. On September 30, 2025, Mr. M.S. requested release via humanitarian parole, citing his lack of criminal history, positive credible fear finding, and other humanitarian factors, including his prior release on parole. *See Scanlan Decl.* ¶ 36. ICE denied that request on October 10, 2025, without providing specific reasoning for its denial. *See ICE Parole Denial.* That decision is not appealable. *Id.* As a result, Mr. M.S. is left without any opportunity for individualized review of his detention.

LEGAL ARGUMENT

I. Parole, as Defined by the INA and Regulations, Requires Process Before Termination.

55. Individuals like Mr. M.S., detained under § 1225(b)(2), are ineligible for a custody redetermination hearing before the immigration court. *See Jennings*, 583 U.S. at 297 (quoting 8 U.S.C. § 1225(b)(2)(A)) (Individuals “covered by § 1225(b)(2) ‘shall be detained for a [removal] proceeding’ if an immigration officer ‘determines that [they are] not clearly and beyond a doubt entitled to be admitted’ into the country”).

56. The only mechanism by which individuals detained pursuant to § 1225(b)(2) may seek release is through a request for humanitarian parole under 8 U.S.C. § 1182(d)(5)(A). *Jennings*, 583 U.S. 281 at 300 (quoting 8 U.S.C. § 1182(d)(5)(A) (“With a few exceptions not relevant here, the Attorney General may “for urgent humanitarian reasons or significant public benefit” temporarily parole [noncitizens] detained under §§ 1225(b)(1) and (b)(2). That express exception to detention implies that there are no other circumstances under which [noncitizens] detained under § 1225(b) may be released.”).

57. Indeed, the Executive Branch has long been permitted to exercise its discretion to temporarily allow into the United States noncitizens who are applying for admission to the country instead of holding them in detention. *See* 8 U.S.C. § 1182(d)(5)(A). Currently, the DHS Secretary holds that parole authority by statute. *See id.*

58. Parole may be granted “under such conditions as [the DHS Secretary] may prescribe” and “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit.” *Id.* The Secretary or her delegees may terminate a grant of parole when “in the opinion of the Secretary of Homeland Security,” “the purposes of [] parole . . . have been served.” *Id.*

59. DHS regulations provide the conditions under which the DHS Secretary and her delegees may grant and terminate parole. *See* 8 C.F.R. § 212.5(a). As relevant here, the regulation provides that parole decisions be made “in accordance with” the terms of INA § 212(d)(5) (8 U.S.C. § 1182(d)(5)), *i.e.*, on a case-by-case basis.

60. A grant of parole terminates automatically, without written notice, (a) when the noncitizen departs the United States, or (b) “if not departed, at the expiration of the time for parole was authorized.” 8 C.F.R. § 212.5(e)(1). In all other cases, parole “shall be terminated upon written notice to the [noncitizen].” *Id.* § 212.5(e)(2). Those other cases include when the “purpose for which parole was authorized” is “accomplish[ed]” or “when in the opinion of” the DHS Secretary or an authorized official “neither humanitarian reasons nor public benefit warrants the continued presence of the alien in the United States.” *Id.*

61. Courts have found that immigration parole revocation without notice violates due process and the APA. *See Mata Velasquez v. Kurzdorfer*, No. 25-CV-493-LJV, 2025 WL 1953796, at *17 (W.D.N.Y. July 16, 2025) (granting preliminary

injunction and release because revocation of parole without “any opportunity to be heard” likely violated due process); *Rodriguez Orellana v. Francis et al.*, No. 25-CV-04212 (OEM), 2025 WL 2402780, *6 (E.D.N.Y. Aug. 19, 2025) (“[B]y denying Petitioner the required procedure before purporting to terminate his parole, Respondents acted arbitrarily and capriciously and violated the APA.”); *Garcia v. Andrews*, No. 1:25-CV-01006 JLT SAB, 2025 WL 2420068 (E.D. Cal. Aug. 21, 2025) (petitioner released on parole under 8 C.F.R. § 1236.1(c)(8) entitled to pre-deprivation hearing prior to redetention).

62. Revocation of parole without notice or explanation is particularly egregious here, where Mr. M.S. had dutifully complied with all ICE reporting requirements and has been found to have not been provided notice of the single missed hearing. Moreover, even after the in absentia order was entered, and shortly before electing to revoke parole, ICE necessarily determined that Mr. M.S. did not pose a flight risk when it removed his ankle monitor in February 2025. Accordingly, ICE’s decision to revoke Mr. M.S.’s parole and failure to follow regulatory requirements in doing so constitutes arbitrary and capricious action.

II. Due Process Requires Notice and a Hearing Prior to Revocation of Humanitarian Parole and Conditions of Release and Prior to Redetention.

63. “In our society liberty is the norm,” and detention is the “carefully limited exception.” *United States v. Salerno*, 481 U.S. 739, 755 (1987). “Freedom from imprisonment—from government custody, detention, or other forms of

physical restraint—lies at the heart of the liberty that [the Due Process] Clause protects.” *Zadvydas*, 533 U.S. at 690.

64. The Fifth Amendment accordingly requires—“[a]t the least”—that detention be “reasonabl[y] relat[ed]” to a valid governmental purpose. *Jackson v. Indiana*, 406 U.S. 715, 738 (1972); *see also Foucha v. Louisiana*, 504 U.S. 71, 79 (1992); *Kansas v. Hendricks*, 521 U.S. 346, 357 (1997).

65. Incarceration can be used to punish criminal acts but may be imposed only after extensive procedural protections designed to ensure that punishment is warranted and that a person is not unjustly deprived of liberty. *See Santobello v. New York*, 404 U.S. 257, 264 (1971) (Douglas, J., concurring). By contrast, civil detainees “may not be punished.” *Foucha*, 504 U.S. at 80; *see also Kingsley v. Hendrickson*, 576 U.S. 389, 400 (2015). Accordingly, the constitutional constraints on civil detention are even higher than in the criminal context. *See Zadvydas*, 533 U.S. at 690; *see also Addington v. Texas*, 441 U.S. 418, 425 (1979) (“civil commitment for any purpose constitutes a significant deprivation of liberty”); *Rosales-Garcia v. Holland*, 322 F.3d 386, 414 (6th Cir. 2003) (applying *Salerno* line of cases to civil immigration detention); *Velasco Lopez*, 978 F.3d 842, at 851, 856 (2d Cir. 2020) (same).

66. To ensure that civil detention does not become impermissible punishment, the Supreme Court has carefully limited its use, insisting that civil detention be used only in “special and narrow nonpunitive circumstances,”

Zadvydas, 533 U.S. at 690, and that it must “bear[] [a] reasonable relation to the purpose for which the individual [was] committed.” *Id.* at 690 (quoting *Jackson*, 406 U.S. at 738). Absent a reasonable relation to these governmental objectives, civil detention becomes impermissible punishment. *Bell v. Wolfish*, 441 U.S. 520, at 539 (1979). In the immigration context, the Supreme Court has recognized only two valid purposes for civil immigration detention—to mitigate a risk of danger to the community and to prevent flight. *Demore v. Kim*, 538 U.S. 510, 528 (2003).

67. In addition, a person’s liberty cannot be infringed upon without “adequate procedural protections.” *Zadvydas*, 533 U.S. at 690–91; *Hendricks*, 521 U.S. at 357; *see also Addington*, 441 U.S. at 425–27. A long line of Supreme Court precedent recognizes the liberty interests of individuals on conditional release, holding that due process requires notice and an opportunity to be heard before the government deprives a person of their conditional liberty. *See Morrissey v. Brewer*, 408 U.S. 471, 482 (1972) (holding liberty interest of individual on parole requires probable cause and revocation hearings before the state may revoke parole); *Gagnon v. Scarpelli*, 411 U.S. 778, 782 (1973) (holding that individuals released on felony probation have a protected liberty interest that requires a pre-deprivation process of *Morrissey* before they can be sentenced to term of incarceration); *Young v. Harper*, 520 U.S. 143, 152 (1997) (individuals placed in a pre-parole program created to reduce prison overcrowding have a protected liberty interest triggering the same pre-deprivation process as *Morrissey* provides); *see also Hurd v. District of Columbia*,

864 F.3d 671, 683 (D.C. Cir. 2017) (“a person who is in fact free of physical confinement—even if that freedom is lawfully revocable—has a liberty interest that entitles him to constitutional due process before he is re-incarcerated”).

68. In *Morrissey*, the Supreme Court considered the process that was due to a parolee prior to parole revocation. The Court concluded that all “liberty is valuable” and must be seen as within the protection of the due process clause. Therefore, even though parole may be lawfully revoked, “[i]ts termination calls for some orderly process, however informal.” 408 U.S. at 482. While the government may have many interests for returning an individual to imprisonment, it “has no interest in revoking parole without some informal procedural guarantees . . . Nor are we persuaded by the argument that revocation is so totally a discretionary matter that some form of hearing would be administratively intolerable.” *Id.* at 483.

69. To comport with due process, a hearing to determine whether “the individual has in fact breached the conditions of parole” not only serves the individual’s protected liberty interests, but also serves the interest of society “in not having parole revoked because of erroneous information or because of an erroneous evaluation of the need to revoke parole . . .” *Id.* at 483–84 (citing *People ex rel. Menechino v. Warden*, 27 N.Y.2d 376, 379, and n. 2 (1971)).

70. A year later, the Supreme Court held that due process also mandates a hearing prior to the revocation of probation. *Scarpelli*, 411 U.S. at 778. The Supreme Court found that “[e]ven though the revocation of parole is not a part of the criminal

prosecution,” nonetheless “the loss of liberty entailed is a serious deprivation requiring that the [individual] be accorded due process.” *Id.* at 781. “Accordingly . . . a probationer, like a parolee, is entitled to a preliminary and a final revocation hearing, under the conditions specified in *Morrissey.*” *Id.* at 782.

71. This rationale equally applies to the revocation of parole, conditions of release and re-detention by ICE. *Demore*, 538 U.S. at 523 (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)) (“It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings.”).

72. District courts around the country have recognized that non-citizens facing civil re-detention share this constitutionally protected interest in their continued liberty. *See, e.g. Kelly v. Almodovar*, No. 25 CIV. 6448 (AT), 2025 WL 2381591, *3 (S.D.N.Y. Aug. 15, 2025) (ICE check-in detention without notice violated due process); *Lopez Benitez v. Francis*, No. 25 CIV. 5937 (DEH), 2025 WL 2371588, at *9 (S.D.N.Y. Aug. 13, 2025) (immigration courthouse arrest without notice violated due process); *Chipantiza-Sisalema v. Francis*, No. 25 CIV. 5528 (AT), 2025 WL 1927931, at *4 (S.D.N.Y. July 13, 2025) (immigration courthouse arrest without notice violated due process); *Ramirez Lopez v. Trump et al.*, 25 Civ. 4826 (JAV), ECF No. 31 (S.D.N.Y. July 10, 2025) (granting TRO and release because re-detention of person on order of supervision without notice likely violated due process); *Valdez v. Joyce*, No. 25 CIV. 4627 (GBD), 2025 WL 1707737, *2 (S.D.N.Y. June 18, 2025) (immigration courthouse arrest without notice violated due

process); *Ceesay v. Kurzdorfer*, No. 25-CV-267-LJV, 2025 WL 1284720, at *13 (W.D.N.Y. May 2, 2025) (“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.”); *see also Rosado v. Figueroa*, No. CV 25-02157 PHX DLR (CDB), 2025 WL 2337099, at *18 (D. Ariz. Aug. 11, 2025), *report and recommendation adopted sub nom. Rocha Rosado v. Figueroa*, No. CV-25-02157-PHX-DLR (CDB), 2025 WL 2349133 (D. Ariz. Aug. 13, 2025) (“A basic principle—that individuals placed at liberty are entitled to due process before the government again imprisons them—has particular relevance here, where Rosado’s detention was previously found to be unnecessary to serve any purpose.”); *Castellon v. Kaiser*, No. 1:25-CV-00968 JLT EPG, 2025 WL 2373425 (E.D. Cal. Aug. 14, 2025); *Prieto Salazar v. Kaiser, et. al*, No. 1:25-CV-01017-JLT-SAB, 2025 WL 2456232 (E.D. Cal. Aug. 26, 2025); *Ortega v. Bonnar*, 415 F. Supp. 3d 963, 969 (N.D. Cal. 2019) (applying *Morrissey* and *Gagnon* to conclude that the non-citizen petitioner had a “liberty interest in remaining out of [immigration] custody”); *see also Meza v. Bonnar*, No. 18-cv-02708-BLF, 2018 WL 2554572, at *3–4 (N.D. Cal. June 4, 2018) (concluding that petitioner raised “serious questions going to the merits” that she had a “vested interest” in her continued release from immigration detention). Indeed, as the court in *Ortega* recognized, a petitioner subject to a civil detention scheme has an “arguably greater” liberty interest “than the interest of parolees in *Morrissey*.” *Ortega*, 415 F. Supp. at 970.

73. Because of Mr. M.S.’s protected interest in his liberty while on humanitarian parole and conditions of release, the Due Process Clause requires, at a minimum, sufficient procedural protections before the government can strip Mr. M.S. of that liberty.

A. Application of the *Mathews* Factors Makes Clear That Notice and a Pre-Deprivation Hearing Was Required.

74. As set forth in *Mathews v. Eldridge*, this Court must consider three factors to determine what procedural protections the Constitution requires: (1) “the private interest that will be affected by the official action;” (2) “the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards;” and (3) “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” 424 U.S. 319, 335 (1976); *see also Mata Velasquez*, 2025 WL 1953796, at *17 (applying *Mathews* test to find that parole revocation without notice likely violated due process).

75. With respect to the first factor, the “importance and fundamental nature” of an individual’s liberty interest is well-established. *See Salerno*, 481 U.S. at 750; *see also Chavez-Alvarez v. Warden York Cnty. Prison*, 783 F.3d 469, 475 (3d Cir. 2015) (“[T]he burden to [a noncitizen’s] liberty outweighs a mere presumption that the [noncitizen] will flee and/or is dangerous.”). Weighing this factor in *Velasco Lopez v. Decker*, in a separate *Mathews* analysis relating to prolonged immigration

detention, the Second Circuit found the private interest to be “on any calculus, substantial.” 978 F.3d at 851–52. This is because “[f]reedom from imprisonment . . . lies at the heart of the liberty” that the Due Process Clause protects. *Zadvydas*, 533 U.S. at 690. *See also Foucha*, 504 U.S. at 80.

76. Second, there is a high risk of an “erroneous deprivation” of liberty through the current procedures and a significant value to providing notice and a hearing. ICE revoked Mr. M.S.’s parole and conditions of supervision and immediately arrested and detained him without setting forth the basis for the revocation and detention, and without first providing any hearing or any other form of procedural due process. The probative value of procedural safeguards is immense. In *Villiers v. Decker*, 31 F.4th 825 (2d Cir. 2022), the Second Circuit recognized the value of notice and a hearing prior to re-detention by ICE. In *Villiers*, a group of detainees filed a habeas petition to seek release from ICE detention during the height of the COVID-19 pandemic. In response to petitioners’ temporary restraining order, the district court ordered Villiers’s release and restrained ICE from arresting him for immigration detention without first obtaining the court’s permission. *Id.* at 828–29. ICE later sought permission to detain Villiers following new criminal charges and the district court denied the motion. In reviewing the government’s appeal, the Second Circuit considered the general conditions that are imposed upon release from detention. *Id.* at 832.

77. In looking to *Morrisey*, *Scarpelli* and additional Supreme Court precedent, the Second Circuit found that “an individual whose release is sought to be revoked is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing. . . .” *Villiers*, 31 F.4th at 833. The Second Circuit remanded the case, ordering the district court to provide an evidentiary hearing, if the petitioner so requested, to determine whether it was more likely than not that the petitioner violated his conditions of release from immigration detention. *See id.* at 837.

78. Third, the proposed procedures—namely, that ICE provide notice of intent to revoke parole and conditions of release with a pre-deprivation hearing at which the government bears the burden of proof—do not meaningfully prejudice the government’s interest in mitigating danger and risk of flight during removal proceedings. *See Zadvydas*, 533 U.S. at 690. Indeed, the government’s interest supports notice and a hearing prior to humanitarian parole revocation and re-detention because the government has an interest in “minimizing the enormous impact of incarceration in cases where it serves no purpose.” *Velasco Lopez*, 978 F.3d at 855; *see also Hernandez-Lara v. Lyons*, 10 F.4th 19, 33 (1st Cir. 2021) (noting that “limiting the use of detention to only those noncitizens who are dangerous or a flight risk may save the government, and therefore the public, from expending substantial resources on needless detention”). Additionally, “unnecessary detention imposes substantial societal costs . . . The needless detention of those

individuals thus separates families and removes from the community breadwinners, caregivers, parents, siblings and employees. Those ruptures in the fabric of communal life impact society in intangible ways that are difficult to calculate in dollars and cents.” *Hernandez-Lara*, 10 F.4th at 33 (citation and internal quotation marks omitted). In this case, the government would not have been prejudiced by providing notice and a hearing to justify the proposed humanitarian parole revocation and re-detention for Mr. M.S.

79. Because Mr. M.S.’s humanitarian parole and conditions of release have been unlawfully revoked and he has been incarcerated without due process, his immediate release must be ordered until such a time that notice is provided and a hearing is held to determine whether there are sufficient grounds for revocation and re-detention. *See Mata Velasquez*, 2025 WL 1953796, at *17 (applying *Mathews* test to find that parole revocation without notice likely violated due process); *Kiarelddeen v. Reno*, 71 F. Supp. 2d 402, 414 (D.N.J. 1999) (“The INS procedures patently failed the *Mathews* test of constitutional sufficiency. And the court finds this failure to be sufficient basis to grant the petitioner’s writ of habeas corpus and direct his release from custody.”)

80. The balance of factors makes clear that, at a minimum, the Respondents were required to provide a pre-deprivation hearing where the government bears the burden of proving that the revocation of humanitarian parole and conditions of release and re-detention were constitutionally permissible, and Mr. M.S. must be

immediately released unless and until a notice and hearing in accordance with due process takes place prior to any re-detention.

III. Mr. M.S.’s Detention of Over Seven Months Has Become Unreasonably Prolonged in Violation of His Due Process Rights.

81. Mr. M.S.’s detention of seven months without a bond hearing is unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment. Mr. M.S.’s continued detention is even more egregious because he has no criminal convictions; thus there are no factors in his history that could indicate any danger to the community.

82. As discussed *supra*, civil detention, like Mr. M.S.’s detention in ICE custody, violates due process except in “certain special and ‘narrow’ nonpunitive circumstances” where the government has a “special justification” that outweighs the individual’s core liberty interest in freedom from detention. *Zadvydas*, 533 U.S. at 690 (quoting *Foucha*, 504 U.S. at 80); *see also Jackson*, 406 U.S. at 738.

83. As an individual detained under § 1225(b), Mr. M.S. retains a due process right to a bond hearing when his detention becomes unreasonably prolonged, as recognized by courts in this District and the Third Circuit. *See, e.g., A.L. v. Oddo*, 761 F. Supp. 3d 822, 825–26 (W.D. Pa. Jan. 6, 2026) (“[T]his Court finds that an arriving [noncitizen] such as Petitioner has a constitutional due process right to a bond hearing once his detention becomes unreasonable to the same extent as [a noncitizen] who is subject to removal under § 1226(c).”); *Akhmadjanov v. Oddo*, Civ. No. 3:25-35, 2025 WL 660663, at *4 (W.D. Pa. Feb. 28, 2025) (same); *Shire v.*

Decker, No. 17 Civ. 1984, 2018 WL 509740, at *4 (M.D. Pa. Jan. 23, 2018) (“Courts have held that arriving [noncitizens] detained pursuant to § 1225(b) enjoy the same basic due process right afforded to many other classes of detained [noncitizens]; that is, the right to an individualized bond hearing once the length of their removal detention has become unreasonable.”); *Pulatov v. Lowe*, No. 18 Civ. 934, 2019 WL 2643076, at *3 (M.D. Pa. June 27, 2019) (“The Court agrees with the weight of authority finding that arriving [noncitizens], like Petitioner detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable.”); *see also Castro v. United States Dep’t of Homeland Sec.*, 835 F.3d 422, 449 n.32 (3d Cir. 2016) (“We doubt . . . that Congress could authorize, or that the Executive could engage in, the indefinite, hearingless detention of [a noncitizens in expedited removal proceedings detained pursuant to § 1225].”).

84. Distinguishing *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138 (2020), the court in *A.L. v. Oddo* explained that “[n]owhere in that decision did the Supreme Court suggest that arriving [noncitizens] being held under § 1225(b) may be held indefinitely and unreasonably with no due process implications, nor that such aliens have no due process rights whatsoever.” 761 F. Supp. 3d at 825. “To the contrary, the Supreme Court has held that the Due Process Clause applies to all persons within the United States, including [noncitizens], whether their presence

here is lawful, unlawful, temporary, or permanent.” *Id.* (quoting *Zadvydas*, 533 U.S. at 693) (internal quotation marks omitted).

85. In addition, although Mr. M.S. has been charged as an arriving noncitizen, following his positive credible fear finding he was paroled into the United States and placed in regular removal proceedings under 8 U.S.C. § 1229a, which entitles him to a full and fair hearing of his claim for relief. Congress has afforded individuals like Mr. M.S. the right to remain in the United States during those proceedings. The Supreme Court has further held that noncitizens with a final order of removal (i.e., who have no right to remain in the United States) cannot be detained indefinitely without a bond hearing. *See Zadvydas*, 533 U.S. at 702. It follows that noncitizens like Mr. M.S., who do have a right to be present in the United States, even if provisionally during the pendency of their immigration proceedings, have the same constitutional protection.

B. Mr. M.S.’s Detention Is Unreasonably Prolonged under The Multifactor Test Frequently Used by Courts in This Circuit to Evaluate the Constitutionality of Detention Without Bond.

86. Mr. M.S.’s detention has moreover become unreasonably prolonged under the multifactor test that has been applied by the Third Circuit. *See German Santos v. Warden, Pike Cnty. Corr. Facility*, 965 F.3d 203, 210–11 (3d Cir. 2020) (applying multifactor test to mandatory pre-order detention under § 1226(c)); *A.L.*, 761 F. Supp. 3d at 826 (“In assessing whether detention [under § 1225(b)] has become unreasonable, this Court sees no reason not to apply the same factors laid

out in *German Santos*.”); *Akhmadjanov*, 2025 WL 660663, at *4 (same). The Third Circuit has provided the following list of factors: (1) “the duration of detention”; (2) “whether the detention is likely to continue”; (3) “the reasons for [any] delay” that prolongs detention; and (4) “whether the alien’s conditions of confinement are meaningfully different from criminal punishment.” *German Santos*, 965 F.3d at 211 (internal quotation marks and alterations omitted). All factors support the finding that Mr. M.S.’s detention has grown unconstitutionally prolonged.

87. Under the **first factor**, Mr. M.S. has been detained in ICE custody for over seven months without a bond hearing. This length of time is prolonged and demands a bond hearing. *See, e.g., German Santos*, 965 F.3d at 211 (citing *Chavez-Alvarez*, 783 F.3d at 478 (finding that six-month to one-year period triggered a bond hearing)); *Diop v. ICE/Homeland Sec.*, 656 F.3d 221, 234 (3d Cir. 2011) (noting that continued detention becomes “more and more suspect” past five months); *A.L.*, 761 F. Supp. 3d at 826 (finding that detention for nearly ten months “falls within the range where courts have held that delays start to become unreasonable”).

88. The **second factor**, likelihood of continued detention, also supports finding that Mr. M.S.’s detention has become unreasonably prolonged. There is no end in sight to Mr. M.S.’s detention while he litigates his fear-based claims. Following several court-generated delays, Mr. M.S.’s trial date is now set for November 5, 2025. *See Scanlan Decl.* ¶ 32. However, both parties are entitled to appeal the IJ’s ruling, and the appellate process would add many more months to

Mr. M.S.’s detention. *Id.* ¶ 34–35; *see also Chavez-Alvarez*, 783 F.3d at 477–78 (3d Cir. 2015) (stating that because a petitioner’s detention was already prolonged at the time the merits hearing was conducted, it could “reasonably predicted that [their] appeal [would] take a substantial amount of time, making his already lengthy detention considerably longer.”); *German Santos*, 965 F.3d at 212 (stating that an appeal “could take months). Statistics from EOIR show that, in cases where an appeal is taken by the noncitizen or DHS, the average length of detention is 382 days.⁴

89. Should the Board reverse the IJ’s decision on appeal, remand of proceedings to the IJ is likely. And should the Board uphold a IJ’s denial of relief, Mr. M.S. would be entitled to petition for review of that decision to the Third Circuit Court of Appeals, which would “add months more in prison.” *German Santos*, 965 F.3d at 212. *See also Abioye v. Oddo*, 704 F. Supp. 3d 625, 630–31 (W.D. Pa. 2023) (concluding that “additional delay of an undefined duration will continue to accrue pending a rule by the court of appeals, and any further administrative proceedings

⁴ *See* Letter from Solicitor General, U.S. Dep’t of Justice, to Scott S. Harris, Clerk, Supreme Court of the United States, Re: *Demore v. Kim*, S. Ct. No. 01-1491 (Aug. 26, 2016), at 3, <https://tracreports.org/immigration/reports/580/include/01-1491%20-%20Demore%20Letter%20-%20Signed%20Complete.pdf> (“The corrections EOIR has now made yield an average and median of 382 and 272 days, respectively, for the total completion time in cases where there was an appeal”); *see also Bermudez Paiz v. Decker*, No. 18-cv-4759, 2018 WL 6928794, at *13 (S.D.N.Y. Dec. 27, 2018) (“The median wait time for a BIA decision in fiscal year 2015 . . . was 224 days, or roughly seven and half months.”).

that may be necessary following that appellate court decision” (internal quotation marks omitted); *Davydov v. Doll*, No. 1:19-cv-2110, 2020 WL 969618, at *5 (M.D. Pa. Feb. 28, 2020) (noting that the undefined period of further detention due to a pending petition for review before the Third Circuit weighed in favor of granting habeas relief).

90. The **third factor**, whether either party caused “unnecessary delay” by “carelessness or bad faith” in the petitioner’s underlying immigration case, also weighs in favor of Mr. M.S. The delays that continue to prolong Mr. M.S.’s detention are not attributable to him. Since ICE elected to imprison Mr. M.S., he has sought rapid adjudication of his immigration claim and has requested no adjournments. *See* Scanlan Decl. ¶ 32. Yet the immigration court has twice rescheduled his final merits hearing, thereby prolonging his detention. *Id*

91. Finally, under the **fourth factor**, Mr. M.S. is being held at Pike in conditions identical to, or worse than, those of county jail inmates serving criminal sentences. As the Third Circuit has found, the conditions of confinement at Pike are, “[d]espite its civil label . . . indistinguishable from criminal punishment.” *German Santos*, 965 F.3d at 212–13; *see also White v. Warden Pike Cnty. Corr. Facility*, No. 23-2872, 2024 WL 4164269, at *2 (3d Cir. Sept. 12, 2024) (citing *German Santos*, 965 F.3d at 212–13) (same).⁵

⁵ Numerous courts within this District have similarly found the conditions of confinement at Pike to resemble criminal punishment. *See, e.g. Appiah v. Lowe*, No.

92. Mr. M.S.’s experience in Pike is consistent with its carceral nature. He describes constant screaming and fighting in his unit, as well as inadequate food and medical care, even following his two incidents of sexual assault. Pet’r Decl. ¶¶ 40–43. These “conditions strongly favor a finding of unreasonableness.” *German Santos*, 965 F.3d at 213.

93. For these reasons, each of the factors of the *German Santos* multifactor test demonstrate that Mr. M.S.’s detention without a bond hearing has become unreasonably prolonged in violation of his right to due process under the Constitution and Third Circuit precedent.

C. Mr. M.S.’s Detention Is Also Unreasonably Prolonged under the Mathews Balancing Test.

94. Mr. M.S.’s detention is also clearly prolonged under the three-part balancing test from *Mathews v. Eldridge*, 424 U.S. 319. First, as discussed *supra*, the private interest at stake for Mr. M.S. is “the most elemental of liberty interests—the interest in being free from physical detention.” *Hamdi v. Rumsfeld*, 542 U.S. 507,

3:24-CV-2222, 2025 WL 510974 (M.D. Pa. Feb. 14, 2025); *Ologbenla v. Lowe*, No. 3:25-CV-1351, 2025 WL 2375272, at *3 (M.D. Pa. Aug. 14, 2025); *Diahn v. Lowe*, No. 1:24-CV-1936, 2025 WL 2115442, at *5 (M.D. Pa. July 11, 2025), *report and recommendation adopted*, No. 1:24CV1936, 2025 WL 2112074 (M.D. Pa. July 28, 2025); *Shonhai v. Lowe*, No. CV 3:24-229, 2025 WL 510975, at *7 (M.D. Pa. Feb. 14, 2025) (internal citations and quotation marks omitted) (“Respondent concedes that this factor weighs in favor of Shonhai in large part because the Third Circuit has already determined that the conditions at [Pike] were punitive as to immigration detainees.”); *Baptista v. Lowe*, No. 1:23-CV-1666, 2024 WL 3410600, at *3 (M.D. Pa. Apr. 30, 2024), *report and recommendation adopted*, No. 1:23-CV-01666, 2024 WL 3410587 (M.D. Pa. May 7, 2024); *Maledo v. Lowe*, No. 1:22-CV-01031, 2022 WL 3084304, at *7 (M.D. Pa. Aug. 3, 2022).

529 (2004) (citing *Foucha*, 504 U.S. at 80). Second, Mr. M.S. faces an acute risk of erroneous deprivation due to the absence, but for action by this Court, of a procedure to challenge his prolonged detention. *See, e.g., Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208, 225 (3d Cir. 2018), *abrogated on other grounds, Johnson v. Arteaga-Martinez*, 596 U.S. 573 (2022) (noting, in the context of mandatory detention under 8 U.S.C. § 1231(a)(6), that “the risk of an erroneous deprivation of liberty in the absence of a hearing before a neutral decisionmaker is substantial”) (internal quotation marks and citation omitted). In Mr. M.S.’s case, this risk is particularly manifest because there is nothing in Mr. M.S.’s history to indicate that he poses any risk of dangerousness.⁶ Third, Respondents do not have an overriding interest in detaining Mr. M.S. without the opportunity for a bond hearing. On the contrary, “[t]o require that the Government justify continued detention ‘promotes the Government’s interest . . . in minimizing the enormous impact of detention in cases where it serves no purpose.’” *Black v. Decker*, 103 F.4th 133, 154 (2d Cir. 2024) (*quoting Velasco Lopez v. Decker*, 978 F.3d 842, 854 (2d Cir. 2020)). Moreover, conducting bond hearings does not impose undue administrative burdens because they are conducted by immigration courts as a matter of course and because

⁶ Moreover, the only process available to Mr. M.S. to seek release from detention under 8 U.S.C. § 1225(b) is to file a request for discretionary parole. 8 U.S.C. § 1182(d)(5)(A). Parole is an insufficient process to protect Mr. M.S.’s constitutional interests. In response to Mr. M.S.’s release request, which was accompanied by documentation, ICE denied parole with no explanation in a one-page letter using generic language. *See ICE Parole Denial*.

the costs to the government of release on alternatives to detention are a fraction of the those of detention at jail-like facilities like Pike. *Alternatives to Detention*, ICE, <https://www.ice.gov/features/atd> (last visited Oct. 22, 2025); *see also Black*, 103 F.4th at 154–55 (concluding that “the additional resources the government will need to expend to justify continued detention [of mandatorily detained noncitizen petitioners] will be minimal—and will likely be outweighed by the costs saved by reducing unnecessary detention”).

IV. THIS COURT SHOULD ORDER ADDITIONAL PROCEDURAL PROTECTIONS AT MR. M.S.’S BOND HEARING.

95. Courts in this District and the Third Circuit have held that when a petitioner’s § 1225(b) detention has become unreasonably prolonged, they have a right to an individualized bond hearing at which the government bears the burden to show by clear and convincing evidence that he is a danger or a flight risk. *A.L.*, 2025 WL 352471, at *2; *Pierre v. Doll*, 350 F. Supp. 3d 327, 333 (M.D. Pa. 2018) (holding that “arriving [noncitizens] detained pre-removal pursuant to § 1225(b) have a due process right to an individualized bond consideration once it is determined that the duration of their detention has become unreasonable” (quoting *Singh v. Sabol*, No. 1:16-CV-02246, 2017 WL 1659029, at *4 (M.D. Pa. Apr. 6, 2017), *report and recommendation adopted*, No. 1:16-CV-2246, 2017 WL 1541847 (M.D. Pa. Apr. 28, 2017))); *see also Akhmadjanov*, 2025 WL 660663, at *4.

96. As the Third Circuit stated in *German Santos*, this standard strikes the appropriate balance between “the [noncitizen’s] liberty interest, the risk of error of

harm to him, and the Government's interest in [detention] until the end of removal proceedings." *Id.*; see also *Velasco Lopez*, 978 F.3d at 855–56 (applying clear and convincing standard to bond hearings pursuant to discretionary detention under § 1226(a) and noting that the standard also applies to pretrial detention and involuntary civil commitment).

97. Finally, the Court should also order the IJ to consider alternatives to detention and Mr. M.S.'s ability to pay bond. Numerous courts have held that IJs must consider whether alternatives to detention (i.e., release on a monitoring program or order of supervision) would address concerns of dangerousness or flight risk and whether bond imposes an unreasonable financial burden on the noncitizen. See, e.g., *Leslie v. Holder*, 865 F. Supp. 2d 627, 640–41 (M.D. Pa. 2012) (concluding that "reasonable, and individually tailored, release conditions" could address DHS's concerns about noncitizen's dangerousness and flight risk and that his poverty was a meaningful factor in assessing bond); *Black*, 103 F.4th at 158–59 (at a constitutionally adequate bond hearing, IJ required to "consider Petitioner's ability to pay and the availability of alternative means of assuring his appearance."); *Hernandez v. Session*, 872 F.3d 976, 991 (9th Cir. 2017) (concluding that "[a] bond determination process that does not include consideration of financial circumstances and alternative release conditions is unlikely to result in a bond amount that is reasonably related to the government's legitimate interests"); *Ousman D. v. Decker*, No. 20 Civ. 9646, 2020 WL 5587441, at *4 (D.N.J. Sept. 18, 2020) (finding that a

bond hearing failed to comply with due process where the IJ did not consider “less restrictive alternatives to detention”); *Hernandez v. Decker*, No. 18 Civ. 5026 (ALC), 2018 WL 3579108, at *12 (S.D.N.Y. July 25, 2018) (holding that the Constitution compels “consideration of . . . alternatives to detention”); *Fernandez Aguirre v. Barr*, No. 19 Civ. 7048, 2019 WL 4511933, at *5 (S.D.N.Y. Sept. 18, 2019) (observing that requiring the consideration of alternatives to detention “track[s] the framework for pretrial detention in the criminal context, where the purpose of considering alternatives is to determine whether measures less intrusive than detention can achieve the same goal (reasonably assuring the safety of the community).”).

98. The Court should therefore order a prompt bond hearing where DHS bears the burden to justify Mr. M.S.’s continued detention by clear and convincing evidence and should order the adjudicator to consider alternatives to detention and Mr. M.S.’s ability to pay at a future bond hearing.

CLAIMS FOR RELIEF

COUNT ONE:

VIOLATION OF THE INA AND FEDERAL REGULATIONS

99. F.M.S. realleges and incorporates by reference the paragraphs above.

100. Respondents’ revocation of Mr. M.S.’s humanitarian parole without written notice violates the purpose of parole as defined in the INA at 8 U.S.C. § 1182(d)(5) and the corresponding federal regulations at 8 C.F.R. § 212. *See Mata*

Velasquez, 2025 WL 1953796, at *17 (immigration parole revocation requires notice and “opportunity to be heard”).

COUNT TWO:
VIOLATION OF ADMINISTRATIVE PROCEDURE ACT

101. F.M.S. realleges and incorporates by reference the paragraphs above.

102. The APA allows courts to hold unlawful and set aside agency action, findings, and conclusions found to be arbitrary, capricious, an abuse of discretion or otherwise not in accordance with law, or without observance of procedure required by law. 5 U.S.C. § 706(2).

103. Agencies are liable under the APA for failing to comply with rules that have the force and effect of law. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 265 (1954); *see also Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (“Where the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures.”).

104. A rule has the force of law where it binds the agency and affects the rights of individuals, whether or not the rule is more rigorous than would otherwise be required and whether or not it has been published in the Federal Register. *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991).

105. Respondents’ revocation of Mr. M.S.’s humanitarian parole violated the agency’s own regulations with respect to notice and justification; it was arbitrary, capricious, and an abuse of discretion and was made without observance of procedure required by law. *See Rodriguez Orellana*, 2025 WL 2402780, *6.

COUNT THREE:
**REVOCAION OF HUMANITARIAN PAROLE IN VIOLATION OF THE
DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

106. F.M.S. realleges and incorporates by reference the paragraphs above.

107. The March 2025 revocation of humanitarian parole, conditions of release and re-detention by ICE caused Mr. M.S. to be separated from his community and placed in a carceral setting. His re-detention therefore infringed upon a liberty interest that cannot be revoked without adequate due process under the Fifth Amendment to the U.S. Constitution. *See Ceesay*, 2025 WL 1284720, at *13 (“[T]he mere fact that the government has the authority to detain someone does not mean that it may do so in any manner it chooses, without affording due process.”)

108. Under a *Mathews* analysis, notice of an intent to revoke parole and conditions of release and a hearing before a neutral arbitrator was required before Respondents could incarcerate Mr. M.S. in ICE detention. *See Mata Velasquez*, 2025 WL 1953796, at *17 (applying *Mathews* test to find that parole revocation without notice likely violated due process).

109. Respondents violated Mr. M.S.’s due process rights under the Fifth Amendment to the U.S. Constitution by detaining him after he was released on humanitarian parole and conditions of release without providing adequate procedural protections to ensure that the parole revocation and re-detention serve a valid governmental purpose. *See Morrissey*, 408 U.S. at 471.

COUNT FOUR:
**UNREASONABLY PROLONGED DETENTION IN VIOLATION OF THE
DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

110. F.M.S. realleges and incorporates by reference the paragraphs above.

111. The Due Process Clause of the Fifth Amendment of the U.S. Constitution forbids the government from depriving any person of liberty without due process of law.

112. F.M.S.'s detention without a bond hearing, which has lasted over seven months and will likely span many more months—or even years—has become unreasonably prolonged in violation of the Due Process Clause of the Fifth Amendment. But for action by this Court, F.M.S. will remain detained in violation of his due process rights.

113. The Court should find that F.M.S.'s continued detention without a bond hearing violates the Constitution. At a minimum, to remedy F.M.S.'s unreasonably prolonged detention, the Court should order an individualized bond hearing at which Respondents bear the burden to show continued detention is warranted by clear and convincing evidence, and at which the adjudicator must consider F.M.S.'s ability to pay and whether alternatives to detention might mitigate any risk of danger or flight.

PRAYER FOR RELIEF

WHEREFORE, C.B. respectfully requests that this Court:

- a. Assume jurisdiction over this matter;

- b. Enjoin Respondents from transferring Petitioner outside the jurisdiction of the Philadelphia Field Office of Immigration and Customs Enforcement pending the resolution of this case;
- c. Grant Petitioner a writ of habeas corpus and order his immediate release from custody on his own recognizance or under reasonable conditions of supervision, pending notice and a pre-revocation hearing where the government bears the burden of proof to demonstrate sufficient changed circumstances or violations of conditions to justify revocation of humanitarian parole and conditions of release;
- d. Alternatively, grant Petitioner a writ of habeas corpus and order Respondents to provide a prompt hearing where the government bears the burden of proof to demonstrate sufficient changed circumstances or violations of conditions to justify revocation of humanitarian parole and conditions of release;
- e. Alternatively, declare that Petitioner's continued detention violates the Due Process Clause of the Fifth Amendment and order Petitioner's immediate release;
- f. In the alternative, conduct, or order Respondents to schedule before an immigration judge within seven days, an individualized bond hearing, at which Respondents bear the burden to establish by clear and convincing evidence that Petitioner poses a present danger to the community or a flight risk, and at which the adjudicator must take into account Petitioner's ability

to pay bond and the alternatives to detention that may mitigate danger or flight risk;

- g. Retain jurisdiction over this matter to conduct its own bond hearing or order other appropriate remedies should Respondents fail to comply with this Court's order;
- h. Award Petitioner all costs incurred in maintaining this action, including attorneys' fees under the Equal Access to Justice Act, 5 U.S.C. § 504, 28 U.S.C. § 2412, and on any other basis justified by law; and
- i. Grant any other further relief as the Court deems just and proper.

Dated: October 31, 2025

Respectfully submitted,

/s/ Perry Hall McAninch
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Counsel for Petitioner

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of F.M.S. because I am one of his attorneys at The Legal Aid Society and have reviewed his case materials and communicated with the other attorneys on his case. On information and belief, I hereby verify that the factual statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: October 31, 2025

Respectfully submitted,

/s/ Perry Hall McAninch
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